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101ST CONGRESS *2d Session*	SENATE	REPORT 101-449

HAZARDOUS MATERIALS TRANSPORTATION SAFETY IMPROVEMENT ACT OF 1990

Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

OF THE

SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ON

S. 2936

AUGUST 30, 1990.—Ordered to be printed

Filed under authority of the order of the Senate of August 2 (legislative day, July 10), 1990

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Mr. HOLLINGS, from the Committee on Commerce, Science, and Transportation, submitted the following

REPORT

[To accompany S. 2936]

The Committee on Commerce, Science, and Transportation, to which was referred the bill (S. 2936) to amend the Hazardous Materials Transportation Act to authorize appropriations for fiscal years 1990, 1991, and 1992, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill as amended do pass.

PURPOSE OF THE BILL

This legislation would reauthorize the Federal hazardous materials (hazmat) transportation program through fiscal year (FY) 1992. The legislation also amends the Hazardous Materials Transportation Act (HMTA) to strengthen the program in a number of critical areas, including through the creation of a grant program to provide assistance to State and local governments for training personnel to facilitate responses to hazmat transportation accidents.

BACKGROUND AND NEEDS

Initially adopted in 1975, HMTA is the principal Federal law regulating the safe transportation of hazardous and radioactive materials. There have been no substantial revisions to HMTA since its enactment. Authorization for HMTA expired at the end of FY 1986.

The original intent of HMTA was to authorize the Department of Transportation (DOT) with the regulatory and enforcement authority to protect the public against the risks imposed by all forms of hazardous materials transportation, and to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations. HMTA applies to interstate commerce and any transportation that affects interstate commerce. Consequently, HMTA applies to persons who offer hazardous materials for transportation (shippers), accept hazardous materials for transport (common, contract, and private carriers), and manufacture, fabricate, and retest containers used for hazardous materials.

As delegated by the Secretary of Transportation (Secretary), the authority for enforcement under HMTA is shared by the Research and Special Programs Administration (RSPA), the Federal Highway Administration (FHWA), the Federal Railroad Administration (FRA), the Federal Aviation Administration (FAA), and the U.S. Coast Guard.

At the request of the Committee, during the 99th Congress, the Office of Technology Assessment (OTA) undertook an analysis of Federal hazardous materials laws and enforcement practices. In July 1986, OTA published its findings in a report entitled *Transportation of Hazardous Materials*, which is viewed as one of the most comprehensive in this area. Three policy issues covered in that report were addressed at the end of the 99th Congress. These include: (1) a national uniform truck driver's license; (2) community emergency planning; and (3) community right-to-know guidelines.

Overall, OTA found that more than 60 percent of the hazardous materials transported each year travel by truck; the next largest percentages are carried by barge, rail, and air, respectively. OTA also indicated that over 60 percent of reported vehicle accidents and hazardous materials spills can be attributed to human error.

Among the major policy issues identified for Congressional consideration by OTA were: (1) the need for development of a national strategy to provide training assistance to State and local emergency responders, and clarification of the lines of responsibility among DOT, the Environmental Protection Agency (EPA), the Federal Emergency Management Agency (FEMA), the Nuclear Regulatory Commission (NRC), and the Department of Energy (DOE); (2) the need of State and local jurisdictions for assurances that Federal regulations provide adequate protection, thereby reducing the need for additional State and local regulation which could result in a regulatory patchwork that would complicate enforcement and prove unduly burdensome to industry; (3) the need for a RSPA outreach information program for shippers, carriers and freight forwarders, along with mandatory training, to reduce high violation rates and help State emergency planning and preparedness; and, finally, (4) while standards set by NRC for spent nuclear fuel containers were found by OTA to be exceptional when designs and quality assurance procedures are followed, concern was expressed about DOE's use of containers not meeting NRC standards.

LEGISLATIVE HISTORY

Senator Exon introduced S. 2936 on July 30, 1990. Additional proposals before the Senate and referred to the Committee include: S. 581, the Hazardous Materials Rail Transportation Act; S. 728, the Hazardous Materials Transportation Amendments of 1989; S. 729, the Radioactive Materials Transportation Act of 1989; and S. 2318, the Hazardous Materials Safe Transportation Act of 1990. House proposals include: H.R. 3520, the Hazardous Materials Transportation Act Uniform Safety Amendments Act of 1990, as approved by the House Committee on Energy and Commerce and the House Public Works Subcommittee on Surface Transportation; H.R. 3229, legislation submitted at the request of the Bush Administration; and H.R. 2584, legislation requiring registration and tracking of hazardous materials shipments.

During the 100th Congress, the Committee held three days of hearings on the issue of hazardous materials transportation. During these hearings, the Committee received testimony from several Senators, as well as an overview of HMTA from OTA, the Congressional Research Service, DOT, and panels representing local officials, industry, shippers, and carriers. The third of the three hearings focused primarily on the transportation of nuclear materials. During that hearing, testimony was received from DOT, DOE, NRC, and panels representing States, industry, and public interest groups. No consensus was reached on hazardous materials transportation safety legislation last Congress.

This Congress, at the hearing on July 25, 1990, the Committee heard testimony from Senators Howard Metzenbaum and Arlen Specter, Representative Douglas Applegate, RSPA and panels representing shippers, carriers, States, labor, fire fighters, and fire safety administrators.

On July 31, 1990, in open executive session, the Committee considered S. 2936 and, after adopting an amendment offered by Senator Kasten to direct a DOT study of shared shipper-carrier liability, ordered the bill reported as amended without objection.

SUMMARY OF MAJOR PROVISIONS

The bill, as reported, includes provisions in the following areas.

Regulations.—Mandates that the Secretary issue regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. Regulations would be applicable to shippers, carriers and container manufacturers.

Highway Routing.—Requires DOT to issue standards for States to use in the designation of highway routes for the safe transportation of hazardous materials. Highway routing standards would be required to enhance overall public safety, include consultation with affected jurisdictions, provide an opportunity for public comment, and not unreasonably burden commerce. In establishing routes, specific factors would be considered including: population density, type of highways, type and quantities of hazardous materials, emergency response capabilities, consultation with affected parties, exposure and other risk factors, terrain considerations, continuity of routes, alternative routes, effects on commerce, and such other factors as the Secretary considers appropriate. The bill also estab-

lishes a Federal dispute resolution process to adjudicate routing disputes among adjacent States or Indian tribes.

International Uniformity.—Establishes procedures to encourage international uniformity in hazardous materials regulations. The Secretary would participate in international forums for this purpose, subject to guidance and direction from the Secretary of State.

Disclosure.—Mandates disclosure, through the use of shipping papers, regarding hazardous materials present in a shipment. This provision is applicable to shippers and carriers. The shipping paper, at a minimum, must disclose a description of the hazardous material, the hazard class of the material, the identification number of the material, immediate first action emergency response information or a means for appropriate reference to such information which must be immediately available, and a telephone number for the purpose of obtaining more specific handling and mitigation information concerning the material at any time during its transportation. This provision also requires that the transporter, in the event of an incident involving such material, shall disclose information on the material being transported to appropriate emergency response authorities upon request.

Unlawful Representation.—Prohibits persons from making false representations about the presence or absence of hazardous materials in a container, package or vehicle.

Unlawful Tampering.—Provides that no person shall unlawfully alter, remove, deface, destroy, or otherwise tamper with any marking, label, placard, or document description required by HMTA, or any package, container, motor vehicle, rail freight car, aircraft, or vessel used for the transportation of hazardous materials.

Retention of Markings and Placards.—Requires the Secretary of Labor (acting through the Occupational Safety and Health Administration) to act in consultation with DOT and the Secretary of the Treasury to issue regulations requiring any employer who receives a package, container or vehicle which contains a hazardous material subject to placard or other labelling requirements to retain such placard or label on the package, container or vehicle until the hazardous materials have been removed therefrom.

Safety Permits.—Requires that no motor carrier may transport or cause to be transported in commerce, in a quantity established by the Secretary, any class A or B explosives, any hazardous material which has been designated as extremely toxic by inhalation, or any highway route controlled quantity of radioactive materials as defined by the Secretary, unless the carrier obtains and possesses a valid DOT safety permit. Similarly, shippers only may tender such materials to carriers presenting a valid safety permit. The bill further mandates a rulemaking to determine which additional materials, if any, should be added to the list of materials for which safety permits are required, by virtue of their high degree of risk when transported.

The bill also requires the Secretary to undertake a rulemaking to issue regulations requiring the safe operation by persons who transport or cause to be transported by rail, air, or water in commerce any class A or B explosives, any hazardous material designated as extremely toxic by inhalation, radioactive materials in such quantities as determined by the Secretary, or other hazardous

materials the Secretary determines should be subject to such regulations because of their high degree of risk when transported.

Penalties.—Repeals the current requirement that a person must "knowingly" violate a hazardous materials transportation law or regulation before being subject to civil penalties. The bill also increases the maximum civil penalty from the current $10,000 to a new maximum of $25,000 per violation per day. A minimum civil penalty of $250 is established by the bill. The bill also amends the criminal penalty section of the HMTA to provide that in addition to a five-year maximum criminal sentence for persons who knowingly violate the Act, such persons also may be fined up to a maximum of $250,000 for individuals and $500,000 for corporations.

Transportation of Highly Radioactive Materials.—Requires the Secretary to issue regulations requiring the use of single-purpose dedicated trains for the transportation by rail of high-level radioactive waste and spent nuclear fuel by any party, including shipments under the direction or supervision of DOE or the Department of Defense (DOD). The bill also requires that the Secretary issue standards for the selection of shipping modes and routes used for the transportation of high-level radioactive waste or nuclear spent fuel. Such materials may not be transported except in packages or containers that have been certified by the NRC after being subject to performance testing on a sample full-scale package or container, in addition to any simulated testing, testing on scale models, or engineering analysis.

Emergency Response Planning and Training Grants.—Allows the Secretary to make grants to States and Indian tribes to enhance planning and public sector employee training for responding to hazardous materials. The bill would require States to pass at least 75 percent of their grant monies to political subdivisions of the State. This provision requires grant use plans to be submitted to the Secretary which foster and promote regional response teams, eliminate duplication of existing efforts, and provide for coordination of activities.

The bill allows grants to be used for: (1) surveying routes; (2) analyzing hazards; (3) defining specific response functions and roles; (4) developing a long-term governmental resource and training strategy; (5) improving and exercising hazmat emergency response plans; (6) developing notification, evacuation, and shelter procedures; (7) paying for training and costs associated with training courses and materials; and (8) increasing capability of the grantee to train, plan for, and respond to hazmat emergencies. In order to receive a grant, the bill requires that a State, political subdivision of a State, or Indian tribe certify to the Secretary that the grant will be used to train a wide variety of emergency response personnel, utilizing: (1) training requirements of the Emergency Planning and Community Right-to-Know Act of 1986; and (2) occupational safety and-health standards issued by the Administrator of EPA and the Secretary of Labor, or other training standards or courses issued, approved, or recommended by the Secretary, the Administrator of EPA, the Director of FEMA, the Chairman of NRC, the Secretary of Labor, the Secretary of Energy, the Secretary of Health and Human Services (HHS), the Federal Radiological Preparedness Coordinating Committee, or the National Response Team.

The bill mandates that the Secretary allocate funds for grants to States and Indian tribes based on such factors as the needs of such States and Indian tribes for emergency response training, considering the number of facilities affecting hazardous materials transportation in the State or on the lands of the Indian tribe, the types and amounts of hazardous materials transported, and also whether the State or Indian tribe assesses and collects fees on the transportation of hazardous materials, whether these fees are used solely for purposes related to hazardous materials transportation, and whether regional or cooperative response efforts have been coordinated.

The bill provides that the Secretary only make a grant to a State or Indian tribe if the State or Indian tribe is complying with the Emergency Planning and Community Right-to-Know Act of 1986. Reimbursement to a State or Indian tribe may be for up to 80 percent of the cost incurred by the State or Indian tribe for carrying out the grant-related activities. To be eligible for Federal funds, a State or Indian tribe must maintain at least its average level of spending for the two previous fiscal years on public-sector training.

Assistance to State, Tribal, and Local Government.—Adds a new section which mandates the Secretary, as appropriate, in cooperation with the Director of FEMA and the Administrator of EPA, to provide technical information and policy assistance to the States and to tribal, regional, and local governments to encourage effective and efficient emergency responses, as well as development of regional response teams.

Authorization of Appropriations.—Authorizes to be appropriated $10,600,000 for FY 1990, $12 million for FY 1991, and $14 million for FY 1992 for the general purpose of carrying out the MTA. This provision also authorizes $10 million for FY 1991 and $25 million for FY 1992 for emergency planning and training grants.

Additional Safety Inspection.—Requires DOT to employ and maintain 30 additional safety inspectors above the number authorized for FY 1990, for FRA, FHWA, and RSPA. The bill specifies that 10 of these additional inspectors focus on promoting safety in the transportation of radioactive materials.

Study of Identification of Hazardous Materials In Transit.—Requires the Secretary, in consultation with representatives of the transportation industry, transportation labor organizations, equipment manufacturers, police and fire protection organizations, shippers, and appropriate international organizations, to undertake a study and report to Congress regarding the effectiveness of the present system of identifying hazardous materials, means to improve such identification while in transit, and costs associated with the present system and potential modifications.

Motor Carrier Safety Ratings.—Requires the Secretary, in consultation with the Interstate Commerce Commission (ICC), to issue a final rule amending the Federal motor carrier safety regulations: (1) to make available to the public and update periodically the safety ratings of motor carriers determined to be unsatisfactory; and (2) to conduct reassessments of motor carriers rated unsatisfactory within nine months after receiving a written request to do so from the motor carrier. Any motor carrier receiving an unsatisfac-

tory safety rating would be prohibited from operating a commercial motor vehicle.

Rulemaking on Registration.—Requires the Secretary to initiate a rulemaking proceeding concerning the need to establish annual or other registration requirements for carriers, shippers, those who store in transit, and those who manufacture, fabricate, mark, maintain, recondition, repair, or test packages or containers used for hazardous materials. The rulemaking shall consider the feasibility of registration as a means of promoting compliance with the HMTA, targeting enforcement efforts, and identifying areas of high risk, and shall take into account alternatives to registration, the costs of administering a registration program, and ways to recover these costs.

Rail Participation Program.—Amends the Federal Rail Safety Act of 1970 (FRSA) to provide that the State participation program in rail safety be extended to include hazardous materials.

Shipper Responsibility Study.—Requires the Secretary to report to Congress on: (1) the safety benefits of providing that shippers shall be held liable for fifty percent of the cost of damages in the event of an accident involving a motor carrier if the shipper selected a carrier with a less than satisfactory DOT safety rating; (2) such other systems as would assure responsible actions by shippers; and (3) the safety benefits of providing that the liability of persons who caused such a shipment cannot be transferred by indemnification, hold harmless or similar agreements.

Estimated Costs

In accordance with paragraph 11(a) of rule XXVI of the Standing Rules of the Senate and section 403 of the Congressional Budget Act of 1974, the Committee provides the following cost estimate, prepared by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, August 9, 1990.

Hon. Ernest F. Hollings,
Chairman, Committee on Commerce, Science, and Transportation, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has prepared the attached cost estimate for S. 2936, the Hazardous Materials Transportation Safety Improvement Act of 1990.

If you wish further details on this estimate, we will be pleased to provide them.

Sincerely,

Robert D. Reischauer,
Director.

Congressional Budget Office Cost Estimate

1. Bill number: S. 2936.

2. Bill title: The Hazardous Materials Transportation Safety Improvement Act of 1990.

3. Bill status: As ordered reported by the Senate Committee on Commerce, Science, and Transportation, July 31, 1990.

4. Bill purpose: S. 2936 would make a number of significant changes to the Hazardous Materials Transportation Act, the basic legislation governing the Department of Transportation's (DOT) hazardous materials transportation safety program. Included are provisions that would require DOT to:

undertake several regulatory actions and studies;

establish a permit requirement for motor carriers transporting certain hazardous materials by highway;

hire 30 more additional safety inspectors;

make grants to states and Indian tribes for emergency response planning and training; and

provide technical assistance to state and local governments.

The bill would authorize appropriations of $10.6 million for fiscal year 1990, $12.0 million for 1991, and $14.0 million for 1992 to pay for these new activities as well as DOT's ongoing hazardous materials transportation safety programs. In addition, the bill would authorize $10 million in fiscal year 1991 and $25 million in fiscal year 1992 for the new emergency response planning and training grants.

5. Estimated cost to the Federal Government:

[By fiscal year, in millions of dollars]

	1991	1992	1993	1994	1995
Authorization level:					
Specified	22	39			
Estimated	6	10	10	10	10
Total authorization	28	49	10	10	10
Estimated outlays	17	40	30	10	10

S. 2936 would direct DOT to include filing fees in the regulations governing the mandated permitting program. The bill does not specify the amount of the fees. The revenue from these fees could partially or entirely offset the cost of the program, which we estimate would be about $1 million each year.

These costs fall within budget functions 400 and 050.

Basis of estimate: CBO assumed that the full amounts authorized for fiscal years 1991 and 1992 would be appropriated.

S. 2936 would impose new mandates concerning the Federal Highway Administration's (FHWA) motor carrier safety rating process. The bill would require the FHWA to make the names of all motor carriers receiving unsatisfactory ratings available to the public. It also would require that all unsatisfactory ratings be reassessed within nine months, if requested by the carrier ("to the extent practicable"), and that a motor carrier receiving an unsatisfactory rating be prohibited from transporting hazardous materials or operating passenger buses. As a result of these requirements, particularly the last, the FHWA would probably have to devote additional staff resources to working with carriers with unsatisfactory ratings. The additional costs would probably be less than $1 million annually. The bill would authorize no additional appropriations for this purpose.

One of the regulatory actions required by S. 2936 would concern transportation by rail of high level radioactive waste and spent nu-

clear fuel. The bill specifies that all federal government shipments would have to comply with new standards, which would limit such shipments to dedicated trains. This would be more expensive than shipping the materials along with other freight. Based on information provided by the Department of Energy (DOE), we estimate that the cost to comply with this provision would be about $5 million in fiscal year 1991 and $10 million per year thereafter. Most of this cost would involve defense-related activities of DOE and would fall within budget function 050.

6. Estimated cost to State and local governments: None.

7. Estimate comparison: None.

8. Previous CBO estimate: CBO previously prepared a cost estimate for H.R. 3520, the Hazardous Materials Transportation Act Uniform Safety Amendments Act of 1990, as ordered reported by the House Committee on Energy and Commerce. That estimate was transmitted on March 22, 1990. While the two bills are similar, the estimated costs are different, because the House bill included requirements for additional DOT activities and required the hiring of 200 additional inspectors instead of 30.

The estimated budget impact of H.R. 3520 included additional revenues of $12 million in each of the fiscal years 1991 and 1992. This was our estimate of fees that would be collected to offset the cost of the 200 additional inspectors and a registration program for persons involved in hazardous materials transportation as required by the bill.

9. Estimate prepared by Marjorie Miller.

10. Estimate approved by James L. Blum, Assistant Director for Budget Analysis.

Regulatory Impact Statement

In accordance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee provides the following evaluation of the regulatory impact of the legislation, as reported.

NUMBER OF PERSONS COVERED

The legislation provides an authorization of appropriations for FY 1990, 1991, and 1992 to enable DOT to carry out its functions under the HMTA. The legislation also mandates several regulatory changes and rulemakings to promote safety. While the legislation proposes to strengthen the Federal hazardous materials transportation program, it does not propose to bring additional persons within the coverage of the HMTA beyond the shippers, carriers, and container manufacturers who are now covered. (DOT estimates that approximately 500,000 persons and entities are currently subject to regulation and the HMTA. DOT also estimates that the mandatory motor carrier permit program would apply to approximately 1,500 carriers.)

ECONOMIC IMPACT

Section 13 of the bill authorizes appropriation of $10,600,000 for FY 1990, $12 million for FY 1991, and $14 million for FY 1992 for DOT's hazardous materials transportation activities. For emergency response planning and training grants, $10 million is authorized

for FY 1991 and $25 million for FY 1992. These funding levels are modest and are not expected to have an inflationary impact on the Nation's economy.

PRIVACY

This legislation should not be viewed as having a significant impact on the personal privacy of the covered individuals, although it would result in the continuation and limited extension of mandates for recordkeeping, permitting, possible registration, inspections, enforcement, and other requirements which could impact the commercial practices of the affected entities.

PAPERWORK

Insofar as this legislation reauthorizes existing DOT hazardous materials transportation programs, it should result in no change in paperwork requirements. Some additional paperwork will be necessary to satisfy the permitting, routing, and emergency response planning and training grant provisions of the bill. The outcome of the rulemaking on registration also could affect paperwork requirements.

SECTION-BY-SECTION ANALYSIS

SECTION 1.—SHORT TITLE

This section states that the short title of the bill is the "Hazardous Materials Transportation Safety Improvement Act of 1990".

SECTION 2.—DEFINITIONS

Section 2 of the bill amends section 103 of the HMTA to define terms in the bill.

1. The term "imminent hazard" is defined to mean the existence of a condition which presents a substantial likelihood that death, serious illness, severe personal injury, or substantial adverse effect may occur before the reasonably foreseeable completion date of an administrative hearing or other formal proceeding initiated to abate the risk of such harm.

This relocates the definition of "imminent hazard," currently found in section 111(b) of the HMTA and changes the standard "substantial likelihood that serious harm will occur" to "substantial likelihood that death, serious illness, severe personal injury, or substantial adverse effect, including to health or the environment, may occur".

This modification would make it easier for DOT to pursue a direct petition to a Federal district court, when appropriate, to suspend or restrict unsafe hazardous materials transportation activities.

The definition of "serious harm"—"death, serious illness, or severe personal injury"—would be removed since the "imminent hazard" definition now incorporates that language. This provision would add health and environmental effects as elements of harm that may be addressed as an imminent hazard action, thus extending the Secretary's imminent hazard authority to include the full

range of significant potential dangers that can arise from the transportation of hazardous materials.

2. The term "Indian tribe" is defined to mean an Indian tribe authority which has police powers to regulate and enforce hazardous materials transportation requirements within its lands.

3. The term "motor carrier" is defined to mean a motor common carrier, a motor contract carrier, or a motor private carrier as those terms are defined in section 10102 of title 49, U.S.C.

4. The term "person" is defined to mean an individual, firm, copartnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, government, Indian tribe, or agency or instrumentality of any government when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but does not include the U.S. Postal Service and, for purposes of civil and criminal penalties, any agency or instrumentality of the Federal Government. This definition of "person" clearly establishes the jurisdiction of the HMTA over government entities when they engage in commercial transportation (offering hazardous materials in commerce, or transporting hazardous materials in furtherance of a commercial enterprise).

SECTION 3.—REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS

Section 3 of the bill amends section 105 of the HMTA to require the Secretary to issue regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce; establish standards for States to use in the designation of highway routes for the transportation of hazardous materials, with creation of a Federal dispute resolution process to adjudicate routing disputes; encourage international uniformity in hazmat regulations; mandate disclosure, through the use of shipping papers, when hazardous materials are present in a shipment; prohibit persons from making false representations about the presence of hazardous materials in a container, package, or vehicle; prohibit persons from unlawfully tampering with any aspect of a hazmat shipment; and require the retention of markings and placards on a package, container or vehicle until all hazardous materials have been removed therefrom.

New section 105(a)(1) provides that the Secretary shall issue, in accordance with the provisions of section 553 of title 5, U.S.C., including its provision establishing the opportunity for informal oral presentation, regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. This section is specifically intended to extend DOT's regulatory authority to intrastate shipments, as well as shipments in interstate and foreign commerce.

New section 105(a)(2) provides that the regulations issued under this subsection shall be applicable to any person who transports, or causes to be transported or shipped, a hazardous material, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certi-

fied, or sold by such person as qualified for use in the transportation in commerce of certain hazardous materials. This subsection clarifies that regulations issued pursuant to the HMTA are to have broad applicability.

New section 105(a)(3) provides that regulations issued under this subsection shall govern any aspect of hazardous materials transportation safety which the Secretary determines necessary or appropriate.

New section 105(b) relates to highway routing of hazardous materials and establishes Federal standards for States, political subdivisions of States, Indian tribes, and Federal agencies to utilize when they choose to designate highway routes for the transportation of hazardous materials. Under the current HMTA, the Secretary possesses the authority to regulate the routing of hazardous materials but has exercised that authority only in the area of transportation of radioactive materials by highway. The Committee intends to clarify the Secretary's authority in the area of the transportation of non-radioactive hazardous materials by highway by authorizing the Secretary to propose highway routing standards to be applied by States, political subdivisions of States, Indian tribes, and Federal agencies when they make routing decisions. Concurrent Federal-State jurisdiction in this area should serve the goal of enhancing overall safety without unreasonably burdening commerce. The Committee intends that Federal agencies with responsibility for Federal lands, including the National Park Service, the National Forest Service, the Bureau of Land Management, and other such agencies, also be included in this cooperative effort to designate acceptable routes.

New section 105(b)(1) provides that, not later than one year after the date of enactment of the bill, the Secretary shall issue standards for the designation of highway routes over which hazardous materials may be transported by motor carriers. The Committee expects that these standards will be promulgated after notice and opportunity for public comment, including by States, political subdivisions of States, Indian tribes, and Federal agencies. Following issuance of such standards, no State, political subdivision of a State, Indian tribe, or Federal agency shall designate highway routes for the transportation of hazardous materials, except in accordance with those standards.

New section 105(b)(2) would require that highway routing standards issued by the Secretary include the following requirements.

(A) Highway route designations shall enhance overall public safety in the jurisdiction of the authority designating the route and in other jurisdictions directly affected by the designation.

(B) Each State, political subdivision of a State, Indian tribe, or Federal agency seeking to designate a highway route for the transportation of hazardous materials shall consult with each jurisdiction directly affected by the designation and offer an opportunity for public comment.

(C) No such route designation by a State, political subdivision of a State, Indian tribe, or Federal agency may be executed unless (i) it is agreed to by each State, Indian tribe, or Federal agency directly affected by the designation, or (ii) any dispute over the route designation arising from the failure of such an affected State, Indian

tribe, or Federal agency to agree to that designation is resolved in favor of the designating State, Indian tribe, or Federal agency under the dispute resolution process set forth in paragraph (5) of this subsection.

(D) Such route designations shall not unreasonably burden commerce.

(E) The route designation process provided in this subsection, including the participation of affected jurisdictions, shall be completed in a timely manner.

New section 105(b)(3) states that routing standards issued by the Secretary shall provide for consideration of clearly identifiable factors such as: population density; type of highways; type and quantities of hazardous materials; emergency response capabilities; consultation with affected parties; exposure and other risk factors; terrain considerations; continuity of routes; alternative routes; effects on commerce; and such other factors as the Secretary considers appropriate.

New section 105(b)(4) provides that States shall be responsible for determining, in accordance with requirements established by the Secretary, that the highway route designations of their political subdivisions are in accordance with this subsection.

New section 105(b)(5)(A) provides that if a State, Indian tribe, or Federal agency is unable to obtain the agreement of any adjacent State, Indian tribe, or Federal agency to a highway route designation in accordance with this subsection, after attempting to resolve the dispute directly with such adjacent State, Indian tribe, or Federal agency, the State, Indian tribe, or Federal agency seeking designation may petition the Secretary to resolve the dispute. The Federal dispute resolution process does not apply to disputes between political subdivisions within a State. States are charged with resolving the disputes of political subdivisions within their boundaries.

New section 105(b)(5)(B) provides that the Secretary, within 18 months after the date of enactment, shall issue regulations for resolving disputes between or among States, Indian tribes, or Federal agencies under this paragraph.

New section 105(b)(5)(C) provides that, where any State, Indian tribe, or Federal agency is seeking a highway route designation, Federal regulations shall provide for a finding in favor of such State, Indian tribe, or Federal agency if that designation is in accordance with the DOT routing standards issued under paragraph (1) of this subsection and the highway route in dispute will provide the greatest level of highway safety without unreasonably burdening commerce.

New section 105(c) establishes criteria for judicial review of routing designations and dispute resolutions. Except as provided herein, route designations and dispute resolution decisions rendered under subsection (b) shall not be subject to judicial review in any civil or criminal proceeding to enforce a route designation. Any State, Indian tribe, or Federal gency that is a party to a proceeding under subsection (b)(5) and that is adversely affected by a decision rendered in such proceeding, at any time before the expiration of 60 days after that decision becomes final, may file a peti-

tion for judicial review with the appropriate district court of the United States.

New section 105(d) provides that the Secretary shall periodically update and publish a list of currently effective hazardous materials highway route designations. This list of current designations should provide shippers, carriers, and other interested parties with the information they need to make their routing plans and comply with State, local, and tribal designations.

New section 105(e) establishes criteria for international uniformity of Federal hazardous materials regulations. Subsection (e) provides that, subject to guidance and direction from the Secretary of State, the Secretary shall participate in international forums that establish or recommend standards and requirements for the transportation of hazardous materials in international commerce.

In addition, the Secretary is authorized to consult with interested agencies to assure that, to the extent practicable, regulations issued by the Secretary pursuant to this section shall be consistent with standards adopted by international bodies applicable to the transportation of hazardous materials. Nothing in this subsection shall require the Secretary to issue a standard identical to a standard adopted by an international body if the Secretary determines the standard to be unnecessary or unsafe, nor shall the Secretary be prohibited from establishing safety requirements that are more stringent than those included in a standard adopted by an international body, if the Secretary determines that such requirements are necessary in the public interest.

Although the United States is actively involved in the deliberation and standards-setting activities of the United Nations and related organizations, nothing in HMTA addresses DOT's participation in such international forums nor its application of Federal regulations in relation to recommended international standards. The Committee recognizes the importance of these activities and thus is codifying them in the bill. Also, this subsection is in conformity with title 4 of the Trade Agreements Act of 1979 (19 U.S.C. 1542), under which Federal agencies are required to adopt regulations consistent with standards adopted by international bodies to the maximum extent consistent with safety.

New section 105(f) establishes disclosure requirements. It provides that each person who offers for transportation in commerce a hazardous material that is subject to the shipping paper requirements of the Secretary shall provide the carrier, or maintain on the vehicle if a private motor carrier, a shipping paper that, at a minimum, discloses in a manner prescribed by the Secretary, the following:

(A) a description of the hazardous material including the proper shipping name;

(B) the hazard class of the hazardous material;

(C) the identification number (UN/NA) of the material;

(D) immediate first action emergency response information or a means for appropriate reference to such information, which must be immediately available; and

(E) a telephone number for the purpose of obtaining more specific handling and mitigation information concerning the hazardous material at any time during its transportation.

The subsection further provides that any person who transports hazardous material in commerce, in the event of an incident involving such material, shall disclose immediately to appropriate emergency response authorities, upon their request, information on the hazardous material being transported.

The Committee intends to place an affirmative statutory duty on any shipper of hazardous materials to disclose accurately to the carrier relevant product, hazard, and response information. In addition, the Committee intends that carriers immediately disclose information provided by the shipper concerning the hazardous material being transported, should such information be requested by emergency response personnel at the scene of an incident or accident. The Committee does not intend that the carrier be held responsible for erroneous information provided by a shipper, if the carrier could not reasonably be expected to know that the information provided was erroneous.

New section 105(g) provides that no person shall represent, by marking or otherwise, that—

(1) a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this title unless it meets the requirements of all applicable regulations issued under this title, or

(2) a hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel, if that hazardous material is not present.

This subsection is intended to address an increasingly frequent problem, reported to DOT by enforcement personnel, involving negligent or willful misdescription of a shipment as containing a different hazardous material than indicated, or as containing a hazardous material when it does not.

Misinformation regarding the actual hazardous material contained in a shipment presents the possibility of inappropriate emergency response which could cause, rather than avert, disaster. Misinformation indicating that a hazardous material is present when it is not poses the potential for wasting limited resources and diverting personnel from true emergencies. Both situations are unacceptable, and must be prohibited by law.

New section 105(h) provides that no person shall unlawfully alter, remove, deface, destroy, or otherwise tamper with—

(1) any marking, label, placard, or description on a document required by this title or a regulation issued under this title, or

(2) any package, container, motor vehicle, rail freight car, aircraft, or vessel used for the transportation of hazardous materials.

The Committee intends that it be unlawful for any person to tamper with any aspect of a hazardous materials shipment in a way that would undermine the integrity of HMTA requirements. Covered aspects of a hazardous materials shipment would include shipping papers and required documents as well as packages, containers and vehicles in which materials are transported. Appropriate actions taken by persons responsible for shipments, such as correcting a document, replacing a placard to indicate a change, or repairing equipment, would not constitute violations.

New section 105(i) relates to the retention of markings and placards on packages or containers containing hazardous materials. Not later than six months after the date of enactment of the bill, the Secretary of Labor, in consultation with the Secretary and the Secretary of the Treasury, shall issue standards requiring any employer who receives a package, container, motor vehicle, rail freight car, aircraft, or vessel which contains a hazardous material and which is required to be marked, placarded, or labeled in accordance with regulations issued under this bill to retain the markings, placards, and labels, and any other information as may be required by such regulations on the package, container, motor vehicle, rail freight car, aircraft, or until the hazardous materials have been removed therefrom.

In November 1988, six Kansas City firemen were killed when the arson-caused fire they were fighting caused the violent explosion of an unmarked truck-trailer parked at a highway construction site. Because the trailer's hazardous materials placards had been removed, the firemen were unaware of the danger it posed. The Secretaries of Labor, Transportation and the Treasury should cooperate in order to ensure that placards and labels required on hazardous materials and explosives, both in transportation and at stationary facilities, be retained until such materials have been removed to the extent that they no longer pose a safety risk.

SECTION 4.—HAZARDOUS MATERIALS TRANSPORTATION SAFETY PERMITS

To promote safety, section 4 of the bill amends section 106 of the HMTA to mandate and establish criteria for the issuance of Federal permits for motor carriers hauling hazardous materials which present either a high degree of risk in transportation or are of significant concern to the public. The Secretary is also given the authority to amend, suspend, or revoke the permit of a motor carrier which fails to comply with the requirements of the HMTA.

New section 106(d)(1) provides that effective one year after the date of enactment of this subsection, no motor carrier may transport or cause to be transported in commerce, in a quanity established by the Secretary, any class A or B explosives, any hazardous material which has been designated by the Secretary is extremely toxic by inhalation, or any highway route controlled quantity of radioactive materials as defined by the Secretary, unless the carrier obtains and possesses a valid safety permit issued by the Secretary authorizing the carrier to engage in such transportation. The term "extremely," which is used to describe those toxic-by-inhalation materials for which a permit is required, is intended to give the Secretary the discretion to identify those materials which present either a high degree of risk or are of significant concern to the public, and would clearly encompass those toxic-by-inhalation materials which fall within the highest range of risk. Each person who offers for transportation in commerce a hazardous material to which this subsection applies may only offer such material to a carrier presenting a valid safety permit.

New section 106(d)(2) provides that the Secretary shall issue a safety permit to each carrier required under paragraph (1) to possess a permit if the carrier submits a complete application and

meets all other requirements of the regulations issued by the Secretary, including a certification that the carrier has identified all hazardous materials regulations of the Secretary applicable to the carrier's operations and is in full compliance therewith, and the Federal motor carrier safety regulations.

New section 106(d)(3) provides that any safety permit issued under this subsection, after notice and an opportunity for a hearing, may be amended, suspended, or revoked by the Secretary whenever the Secretary determines that a carrier has failed to comply with a requirement of this title or any regulation issued under this title. In cases of imminent hazard, the Secretary may amend or suspend a safety permit immediately without the opportunity for a hearing.

New section 106(d)(4) provides that the Secretary, by regulation, shall establish:

(A) to which hazardous materials and in what quantities this subsection applies;

(B) standards of compliance required to be met for issuance of a safety permit;

(C) application procedures, including form, content, and filing fees;

(D) standards for determining the duration, terms, conditions, or limitations of a safety permit;

(E) procedures for the amendment, suspension, or revocation of a safety permit; and

(F) any other procedures the Secretary considers appropriate to implement this subsection.

The Committee cannot be certain that the listing of materials for which motor carrier permits are required is sufficiently comprehensive to address all materials presenting either a high degree of risk in transportation or significant concern to the public. For that reason, new subsection 106(d)(5), provides that, not later than 12 months after the date of enactment of the bill, the Secretary shall initiate a rulemaking proceeding to determine which additional materials, if any, should be included among the materials specified in paragraph (1), for which motor carrier permits are required because of their high degree of risk when transported or significant concern to the public. Such proceeding shall take into consideration factors including, but not limited to, toxicity, inhalation hazard, an evacuation distances required, as well as the potential for multiple deaths or injuries or significant environmental hazards, in the event of an accident. Such proceeding shall be completed within 24 months after the date of enactment of the bill. The Secretary, within three months after completion of such proceeding, shall issue a rule specifying the materials, if any, which shall be included among those materials whose carriage requires a safety permit in order to protect the public interest.

Just as permits are to be required for motor carriers hauling hazardous materials which present either a high degree of risk in transportation or significant concern to the public, special consideration needs to be given to transport of these materials by any mode. Permit requirements for all modes may be either unnecessary or unworkable. (For example, the ICC has interpreted the railroad "common carrier" obligation to require that railroads carry

all commodities, even those which they may not wish to haul, i.e. spent nuclear fuels and high-level radioactive wastes. Imposition of requirements that rail carriers must hold a permit for hauling such materials could enable reluctant carriers to escape their "common carrier" obligation by simply failing to apply for or maintain a permit. Special regulations, vigilant enforcement by the FRA, emergency action authority pursuant to the FRSA, and stiff penalties under the HMTA should serve as an effective substitute for actual permit requirements for rail carriers.)

New section 106(d)(6) provides that the Secretary shall conduct a rulemaking proceeding and, within 12 months after the date of enactment of this subsection, issue regulations requiring the safe operation by persons who transport or cause to be transported by rail, air, or water in commerce any class A or B explosives, any hazardous material which has been designated by the Secretary as extremely toxic by inhalation, or radioactive materials in such quantities as determined by the Secretary or other hazardous materials the Secretary determines should be subject to such regulations because of their high degree of risk when transported or significant concern to the public. This list would include materials that may be added to the list of materials for which motor carrier permits are required pursuant to the rulemaking under paragraph (5). Such proceeding shall take into consideration factors including, but not limited to, toxicity, inhalation hazard, and evacuation distances required, as well as the potential for multiple deaths or injuries or significant environmental hazards, in the event of an accident.

SECTION 5.—ELIMINATION OF PUBLICATION REQUIREMENT FOR RENEWAL OF EXEMPTIONS

Section 5 amends section 107(a) of HMTA to eliminate publication requirements for renewal of exemptions where such renewal involves only an extension of the time during which the exemption is in effect.

SECTION 6.—DEFINITION OF RADIOACTIVE MATERIALS

Section 6 amends section 108(b) of HMTA to provide that the term "radioactive materials," as used within the Act, does not include any material which the Secretary determines is of such a low order of radioactivity that, when transported, does not pose a significant hazard to health or safety.

SECTION 7.—PURPOSE OF REVIEW OF HAZARDOUS MATERIALS TRANSPORTATION

Section 7 amends section 109(d)(1)(C) of HMTA to enable the Secretary to "take" certain actions rather than simply "recommend" corrective action.

SECTION 8.—PENALTIES

This section amends section 110(a) of HMTA to eliminate the "knowledge" requirement for civil offenses. The section also increases penalties for civil violations from $10,000 to $25,000 and establishes a $250 minimum penalty to further deter violations, in

recognition of the fact that the maximum civil penalties have not been increased since the adoption of HMTA in 1975.

Subsection (b) amends section 110 of HMTA to strengthen criminal penalties. This subsection provides that a person who knowingly violates section 105(f) of this title or willfully violates a provision of this title or an order or regulation issued under this title shall be fined under title 18, U.S.C., which currently subjects individuals to fines of up to $250,000 and corporations up to $500,000, or imprisoned for not more than 5 years, or both."

SECTION 9.—CONFORMING AMENDMENT

Section 9 amends section 111(b) to make a conforming amendment regarding imminent hazard authority for DOT.

SECTION 10.—TRANSPORTATION OF CERTAIN HIGHLY RADIOACTIVE MATERIALS

Section 10 adds a new section 115(a) to HMTA to provide that, within 120 days after the date of enactment of this section, the Secretary shall issue regulations, with respect to the transportation by rail of high-level radioactive waste and spent nuclear fuel. Such regulations shall prohibit any transportation of such materials by rail, including shipments of such materials made by or under the direction or supervision of DOE or DOD, unless such materials are transported on trains operated exclusively for such purpose. The Secretary shall establish effective procedures for monitoring and enforcing the provisions of such regulations.

Currently, nothing prohibits shippers from transporting railcars carrying high-level radioactive materials on "mixed" trains which carry everything from dangerous chemicals to grain, even though emergency response would be extremely complex in the event of a serious rail accident in which those materials were intermingled. As a matter of policy, dedicated trains were used during DOE's entire four year shipping campaign to transport high-level radioactive wastes from the damaged Three Mile Island (TMI) nuclear reactor in Pennsylvania to Idaho for research and storage. The Committee intends that the practice of using dedicated trains in such instances be a matter of statute, not policy.

New section 115(b) requires the Secretary, within 12 months after the date of enactment of this section, to issue standards for the selection of shipping modes and routes used for the transportation of high-level radioactive waste and spent nuclear fuel. Such standards shall be developed in consultation with all potentially-affected States and Indian tribes and, after notice and opportunity for public comment, shall include, but not be limited to, requirements that enhance overall public safety, taking into consideration population densities, types and conditions of highways, railbeds and waterways, quantities of high-level radioactive waste and spent nuclear fuel, emergency response capabilities, exposure and other risk factors, terrain considerations, continuity of routes, available alternative routes, environmental impact factors, and such other factors as may be necessary to select between alternative modes and routes as the Secretary considers appropriate.

Decisions on modes and routes for high-level radioactive shipments now are made at the whim of the shipper, who often is more concerned about "scheduler" efficiency and cost-cutting than safety. This assessment was illustrated in a DOT study, released in November 1989, entitled "Review of the Selection of the Rail Route for Shipping Three Mile Island Debris". The study found that, in the absence of any guidelines, DOE simply selected a mode and relied upon its field office traffic manager and a modal representative to negotiate the details of shipment.

The Committee notes that, subsequent to the DOT study, DOE issued written guidelines for its traffic managers to use in railroad route selection. However, to date, DOT, which has primary responsibility for ensuring the safe transportation of all hazardous materials, only has issued routing guidelines affecting the highway transportation of certain radioactive materials. Section 3 of this bill would require, for the first time, the designation of highway routes for hazardous materials generally. Recognizing that the number of high-level radioactive shipments will be increasing, it is in the interest of public safety for DOT to develop objective federal guidelines to be used in the selecting between alternative modes and routes which could be used for such shipments.

Hazardous materials of all kinds can be safely transported by various modes of transportation, given appropriate equipment and handling. As such, the Committee does not intend that standards simply encourage or discourage the use of one mode over another. Instead, the Committee expects the Secretary to develop a scheme through which various factors could be assessed and used to determine the relative safety merits of different combinations of modes and routes.

New section 115(c) would require the certification of packages for high-level radioactive waste or spent nuclear fuel. The Secretary shall not permit transportation of high-level radioactive waste or nuclear spent fuel except in packages or containers that have been certified for such transportation by the NRC. As part of the process of certifying any package or container, the NRC is to require the performance of actual testing on a sample full-scale package or container, in addition to any simulated testing, testing on scale models, or engineering analysis.

DOE, which is responsible for developing energy resources and transporting spent nuclear fuel from commercial facilities to research and disposal sites, has been allowed to self-certify nuclear packages for its own use, as long as it uses standards "equal" to those established by the NRC. However, public safety interests would be better served if NRC, the independent regulatory agency responsible for the overall safety of nuclear activities, were solely responsible for certifying that new nuclear shipping packages meet its strict standards.

The need for full-scale testing of nuclear shipping packages was raised during the 1987 Committee hearings on hazardous materials transportation safety programs. At that time, an NRC representative testified that all NRC licensed casks are certified as meeting safety standards through a combination of scale-model testing, engineering analysis and computer modelling. Critics of scale-model testing claimed that it produces incorrect predictions and that "the

rationale for the use of the computer would appear to be based on cost" rather than safety. Cited as proof was the case of TRUPAC, a container DOE designed and built for certain radioactive shipments. The one-quarter scale model worked in field tests, but a full-scale TRUPAC failed after only 35 minutes of fire exposure.

Full-scale testing is more expensive than scale model testing. However, the importance of assessing fully the integrity of packages used to transport high-level radioactive materials justifies the expense, especially since the need to certify new packages with such testing is relatively infrequent. In fact, the most recent NRC certification of a cask to be used in transporting high-level radioactive materials was done in 1986, in preparation for the TMI shipping campaign.

New section 115(d) defines terms in the legislation:

1. "Commission" means the Nuclear Regulatory Commission;
2. "high-level radioactive waste" has the meaning given such term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12)); and
3. "spent nuclear fuel" has the meaning given such term in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23)).

SECTION 11.—EMERGENCY RESPONSE PLANNING AND TRAINING GRANTS

During Committee hearings, States, tribal authorities, and local governments have stressed the significant need for assistance from the Federal government to facilitate responses to accidents involving interstate hazardous materials movements. In testimony before the Committee in 1987, OTA stated that "development of a national strategy to provide training for an estimated 1,500,000 State and local emergency response personnel is the primary unmet need" in the area of hazmat transportation. While industry indicates that progress has been in training responders, more must be done to assist States and localities in planning and training to handle responses to accidents involving hazardous materials that pass through their borders. Moreover, the training need is a continuing one. The average tenure of a volunteer firefighter, with volunteers constituting the majority of the Nation's firefighters, has been estimated at two years. As a result, this need is not likely to be addressed by a single infusion of capital for the benefit of States, tribal authorities and localities.

Section 11 authorizes the expenditure of Federal funds to assist States and localities with emergency response planning, utilizing mechanisms established pursuant to the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11001); with training of emergency first responders; and, where needed, with the creation of regional response teams to conduct secondary and other in-depth accident responses. The Committee supports regional response teams, such as those being implemented in the State of Virginia and elsewhere, as a means of maximizing limited financial resources, fostering cooperation within and among States, and facilitating appropriate responses to hazmat accidents.

Under this section, new section 116(a) of HMTA would provide the following.

(1) The Secretary shall make grants beginning not later than one year after the date of enactment of this section to States and Indian tribes to enhance planning for responding to emergencies involving transportation of hazardous materials and for training public-sector personnel used for such response.

(2) The Secretary may not make a grant to a State, or Indian tribe under this section unless such State or Indian tribe agrees that the aggregate expenditure of funds of the State or Indian tribe, exclusive of Federal funds, for training public sector employees for responding to accidents and incidents involving the transportation of hazardous materials will be maintained at a level which does not fall below the average level of such expenditure for the last two fiscal years preceding the date of the enactment of this section. This provision would ensure that Federal funds are used to supplement, not replace, existing State and local expenditures for training.

(3) At least 75 percent of amounts appropriated for making grants to States under this section shall be allocated by States to local and regional governmental entities. This requirement should ensure a pass-through to localities which often bear the full weight of responding to hazmat accidents.

New section 116(b) provides that, in addition to any other requirements established by the Secretary for applications for grants under this section, an applicant for a grant under this section shall submit to the Secretary a detailed plan for the effective and coordinated use of such grant that describes:

(A) activities to be carried out with the grant; and

(B) the justification for and objectives of those activities.

A grant use plan submitted under this subsection shall:

(A) include a description of the training and planning objectives to be accomplished with such grant;

(B) foster and promote to the maximum extent possible regional cooperation and regional approaches to handling hazardous materials, including the linking of response capabilities and emergency response planning between communities and their neighbors; and

(C) eliminate duplication of existing efforts and provide for coordination of activities carried out with the grant with other emergency response activities conducted by Federal, State, tribal, regional, and local governmental and non-governmental entities.

New section 116(c) provides that not later than one year after the date of enactment of this section, the Secretary shall issue regulations establishing requirements for the administration of projects carried out with a grant under this section. Such regulations shall require that such projects shall be administered, in whole or in part:

(1) by State or tribal emergency response commissions established pursuant to section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001);

(2) by local emergency planning committees established pursuant to that section; or

(3) by a State or tribal agency or regional coordinating entity to be designated by the Governor of a State or Chief Executive Officer of an Indian tribe.

New section 116(d) requires that funds received in the form of a grant under this section shall be used for:

(1) surveying the routes over which hazardous materials are transported and the characteristics of that transportation;

(2) analyzing hazards associated with that transportation;

(3) defining specific response functions and roles of agencies and personnel of the grantee for those emergencies;

(4) developing a long-term strategy to assure that governmental resources, and training for those resources, will be available to implement emergency response functions defined pursuant to paragraph (3);

(5) improving and exercising hazardous materials transportation emergency response plans;

(6) developing procedures for notifying, evacuating, and sheltering the public in the event of a hazardous materials transportation emergency;

(7) paying for training and costs associated with training courses and materials; or

(8) increasing the capability of the grantee to train personnel and plan for and respond to emergencies involving the transportation of hazardous materials.

New section 116(e) would establish requirements to promote effective use of training and planning funds as follows.

(1) As a condition of receiving a grant under this section for carrying out training of personnel, a State, political subdivision of a State, or Indian tribe shall certify in writing to the Secretary that the grant will be used to train a wide variety of emergency response personnel, including police, emergency medical technicians, and fire and rescue service personnel.

(2) Training of personnel conducted with grant moneys authorized under this section shall be carried out in accordance with:

(A) training requirements of section 305(a) of the Emergency Planning and Community Right-To-Know Act of 1986;

(B) occupational safety and health standards issued by the Administrator of EPA or issued by the Secretary of Labor; or

(C) other training standards or courses issued, approved or recommended by the Secretary, the EPA Administrator, the Director of FEMA, the NRC, the Secretary of Labor, the Secretary of Energy, the Secretary of HHS, the Federal Radiological Preparedness Coordinating Committee (for radioactive materials), or the National Response Team.

(3) The Secretary shall allocate funds made available for grants under this section for a fiscal year among States and Indian tribes which are eligible to receive such grants in such fiscal year based upon the needs of such States and Indian tribes for emergency response training. In determining such needs, the Secretary shall consider the number and type of hazardous materials facilities in the State or on the lands of the Indian tribe, the types and approximate estimates of the amounts of hazardous materials transported in the State or on the lands of the Indian tribe, and also whether the State or Indian tribe assesses and collects fees on the transpor-

tation of hazardous materials, whether such fees are used solely to carry out purposes related to the transportation of hazardous materials, whether regional or cooperative response efforts have been coordinated, and such other factors as the Secretary determines are appropriate to carry out the objectives of this subsection.

New section 116(f) provides that the Secretary only may make a grant to a State or Indian tribe under this section in a fiscal year if the State or Indian tribe has adopted the Federal standards established under this bill and is complying with sections 301 and 303 of the Emergency Planning and Community Right-To-Know Act of 1986, including compliance with and enforcement of such sections with respect to accidents and incidents involving the transportation of hazardous materials.

New section 116(g) provides that, in making a grant under this section, the Secretary shall reimburse any State or Indian tribe in an amount not to exceed 80 percent of the cost incurred by such State or Indian tribe in the fiscal year for carrying out the activities for which the grant is made. The Committee intends for this to foster a true partnership between the Federal government, States, and Indian tribes in emergency response planning and training activities. A participation requirement will further ensure that funds are spent wisely and in areas of greatest demonstrated need. The funds of the State or Indian tribe which are required to be expended under subsection (a)(2) (relating to funds previously expended by States or tribes for training) shall not be considered to be part of the non-Federal share.

SECTION 12.—ASSISTANCE TO STATE AND LOCAL GOVERNMENTS

Section 12 of the bill creates a new section 117 of HMTA to promote Federal technical and other assistance to State and local governments.

New section 117 provides that, as appropriate, in cooperation with the FEMA Director and EPA, the Secretary shall:

(1) provide technical assistance to State, tribal, regional, and local governments to encourage effective and efficient emergency responses to accidents involving the transportation of hazardous materials, including assistance in the development and use of regional response teams;

(2) develop, collect, and disseminate information concerning methods of responding to such accidents and training programs for responding to such accidents;

(3) provide technical and financial assistance for regional planning in, and studies of, methods of improving coordinated and effective responses to such accidents;

(4) provide technical guidance and support to assist State, regional, and local governments in enforcing regulations issued pursuant ot this legislation;

(5) provide other technical and policy assistance to State, tribal, regional, or local government entities before or during the formulation of regulations affecting hazardous materials transportation safety and before or during the formulation of routing schemes; and

(6) provide other forms of technical, policy, and financial assistance to State, tribal, regional, and local government entities that would promote hazardous materials transportation safety.

SECTION 13.—AUTHORIZATION OF APPROPRIATIONS

Section 13 creates a new section 118 of HMTA to authorize appropriations for the general hazmat program within DOT and for emergency response planning and training grants authorized by section 11 of the bill.

Section 118(a) would authorize funding to be appropriated for carrying out the provisions of this title, other than section 116 (relating to response planning and training grants), not to exceed $10,600,000 for the fiscal year ending September 30, 1990, $12 million for the fiscal year ending September 30, 1991, and $14 million for the fiscal year ending September 30, 1992.

Section 118(b) would authorize funding to be appropriated for carrying out the provisions of section 116 (relating to response planning and training grants) not to exceed $10 million for the fiscal year ending September 30, 1991, and $25 million for the fiscal year ending September 30, 1992.

SECTION 14.—ADDITIONAL SAFETY INSPECTORS

The number of hazmat safety inspectors within DOT must be increased to strengthen DOT's enforcement efforts. Section 14(a) of the bill provides that the Secretary, in FY 1991, shall employ and maintain thereafter an additional 30 hazardous materials safety inspectors above the number of safety inspectors authorized for FY 1990, in the aggregate, for FRA, FHWA, and RSPA. The Secretary shall take such action as may be necessary to assure that the activities of 10 such additional inspectors focus on promoting safety in the transportation of radioactive materials, as defined by the Secretary. These activities shall include, but not be limited to—

(1) the inspection at the point of origin of every shipment of high-level radioactive waste or nuclear spent fuel, as those terms are defined in section 115(d) of HMTA, as added by section 10 of this bill; and

(2) the inspection, to the maximum extent practicable, of shipments of radioactive materials that are not high-level radioactive waste or nuclear spent fuel.

Section 14(b) of the bill provides that, in carrying out their duties, the additional inspectors authorized by this section, to the maximum extent possible, shall cooperate with safety inspectors of the NRC and appropriate State and local government officials.

Section 14(c) of the bill provides that of the 10 additional inspectors authorized to promote safety in the transportation of radioactive materials—

(1) not less than one shall be allocated to RSPA;

(2) not less than three shall be allocated to FRA;

(3) not less than three shall be allocated to FHWA; and

(4) the remainder shall be allocated, at the discretion of the Secretary, among the agencies referred to in paragraphs (1), (2), and (3).

Almost every witness appearing at the Committee's hazmat hearings during the 100th and 101st Congresses testified that DOT's overall hazmat safety inspection force is inadequate to ensure public safety. The authorization of 30 additional hazmat safety inspectors is intended to remedy this problem.

With regard to assigning 10 of these additional inspectors to the safe transportation of radioactive materials, the Committee recognizes that DOT has not continually employed even one inspector specifically for the safe transportation of radioactive materials in recent years. This is of particular concern given the fact that between 100 and 300 shipments of high-level radioactive waste and spent nuclear fuel are transported annually. Thousands of low-level radioactive shipments, many of them for medical or research purposes, also are shipped each year.

The Committee notes that an unknown number of these shipments may be inspected by state and local inspectors, or by Federal personnel from departments other than DOT. In order to ensure that such shipments meet safety requirements, DOT must establish a consistent approach with regard to the inspection of both high- and low-level radioactive materials shipments.

Given the reported shortage of employment candidates with degrees in Health Physics, the Committee does not direct the radioactive transportation inspectors be so qualified. However, the Committee does intend that such inspectors be qualified in the field of radiation protection, rather than qualified only to provide vehicle inspection activities.

SECTION 15.—STUDY OF IDENTIFICATION OF HAZARDOUS MATERIALS IN TRANSIT

During the Committee's hearings, concerns were expressed by fire fighters, fire safety administrators, and others regarding the need to improve the identification of hazardous materials in transit in order to facilitate accident response. Other witnesses raised questions regarding the extent of the improvements that may be needed, as well as costs associated with various alternatives. The hearings yielded no consensus on either the extent of the improvements that are needed or appropriate alternatives.

Proper identification of hazardous materials is an element critical to facilitating accident response and to protecting worker and public safety. Current DOT regulations require that hazardous materials shipments be identified through the use of placards affixed to the sides of vehicles and containers. These placards contain hazard information in a format that is intended to be readily visible to enforcement and response personnel. However, criticism has been directed at the occurrence of missing, obscured, or improper placards, all in violation of the HMTA. Others believe that the placards contain inadequate information to fully assist responders.

In order to address this important issue, section 15 of the bill requires the Secretary, in consultation with representatives of the transportation industry, transportation labor organizations, equipment manufacturers, police and fire protection organizations, shippers, and appropriate international organizations, to undertake a study of the present system of identifying hazardous materials and

means to improve such identification while in transit. The study shall address the following:

(1) the effectiveness of the present system of identifying hazardous materials while in transit, including estimates of the frequency of improper identification and the frequency of missing identification; the causes of improper or missing identification; and training and enforcement measures designed to ensure proper identification and the effectiveness of these measures;

(2) modifications or alternatives to improve the present system of identifying hazardous materials while in transit; and

(3) the costs associated with the present system and each of the modifications or alternatives studied.

The Secretary shall report the results of the study to Congress within one year after the date of enactment of this bill. The Committee intends that this study shall include consideration of the need and costs associated with computer registration or hazardous materials tracking proposals such as those contained in H.R. 2584 and S. 2319.

SECTION 16.—MOTOR CARRIER SAFETY RATINGS

Section 16 includes a provision that was originally approved by the Committee and adopted by the Senate as part of S. 819, the Motor Carrier Safety Act of 1989, and also approved by the Committee as part of S. 2393, the Safe Food Transportation Act.

By statute, FHWA has jurisdiction over the safety of all interstate motor carriers. One of FHWA's responsibilities is to conduct safety and compliance reviews of motor carriers at the carriers' principal place of business. These reviews determine whether a carrier is in compliance with the Federal Motor Carrier Safety Regulations (FMCSR) and the Hazardous Materials Transportation Regulations. Upon completion of a review, the carrier receives a safety fitness rating of "satisfactory," "conditional," or "unsatisfactory." As of May 1, 1990, FHWA had given a safety rating to over 80,650 motor carriers out of the estimated 210,000 interstate motor carriers operating in this country. More than one-half of the carriers have received a less than satisfactory safety rating.

This section of the bill focuses on those carriers which represent the greatest safety risk—those that receive an "unsatisfactory" safety rating. In order to receive a rating of unsatisfactory, a carrier must lack basic safety management control systems required by DOT (e.g. the checking of driver qualifications and the keeping of vehicle maintenance records) and must have been involved in at least one preventable accident during the previous 12 months. Roughly 4 percent of the carriers rated to date have a safety and compliance record poor enough to receive an unsatisfactory rating.

Currently, over 688 motor carriers with "unsatisfactory" safety ratings transport hazardous materials over the Nation's highways. In addition, 78 passenger bus companies are operating with an "unsatisfactory" safety rating. This section requires the Secretary to issue final rules within one year of enactment of this bill to: (1) provide that any motor carrier receiving an "unsatisfactory" safety rating shall be prohibited from transporting any load of hazardous

materials requiring a placard or operating a passenger bus which carries more than 15 persons until such time as that carrier's rating has been upgraded to "conditional" or "satisfactory;" (2) establish a system to make readily available to the public the name of any motor carrier receiving an "unsatisfactory" safety rating; and (3) provide that an "unsatisfactory" carrier requesting a reassessment be re-rated, to the extent practicable, within nine months of the receipt of the request.

The Committee believes that the current lack of any penalties or restrictions imposed by DOT as a result of receiving an "unsatisfactory" safety rating offers no incentive for a motor carrier to comply with the FMCSR. The intention of the Committee is to offer such an incentive by informing shippers, insurers, State enforcement officials, and other interested parties of the names of unsatisfactory carriers. In addition, this provision would result in the suspension of the operation of unsatisfactory hazardous materials haulers and passenger bus operators rated unsatisfactory. Because of their potential threat to human life, these carriers, at a minimum, should be required to attain a "conditional" safety rating. In the case of an unsatisfactory-rated carrier transporting hazardous materials or passengers, FHWA is encouraged to complete a reassessment of the carrier more promptly than the nine-month limit recommended by this section. The primary goal of this section is to encourage compliance with the FMCSR and not to suspend, longer than necessary, the operation of motor carriers.

With respect to informing the public of the names of unsatisfactory carriers, this provision directs FHWA to consider options such as maintaining a telephonic service whereby the name of an unsatisfactory carrier may be obtained easily and the list updated frequently or publishing periodically updated lists of carriers with an "unsatisfactory" rating in the Federal Register or a similar source. The Committee assumes that the FHWA will continue to operate under the same guidelines as it currently uses to determine a carrier's safety fitness rating. Of course, refinements in the process are encouraged. However, any reluctance on the part of the FHWA to issue an "unsatisfactory" safety rating because of the provisions of this bill and the rating's increased importance to the motor carrier's operations would reduce highway safety.

Under regulations set forth in 49 CFR 385.15, due process is afforded a carrier that has received an "unsatisfactory" safety rating. The carrier may petition for a factual review of the violations upon which the safety rating was based. With the advent of sanctions for unsatisfactory carriers laid out in this section, the need to assure factual accuracy becomes all the more important. Nevertheless, the Committee expects FHWA both to meet due process requirements and to move promptly to issue "unsatisfactory" ratings when a motor carrier's safety and compliance practices warrant such action.

Section 16(a) of the bill requires that, not later than one year after the date of enactment of this bill, the Secretary, in consultation with the ICC shall issue a final rule amending FMCSR regarding motor carriers which may be permitted to carry hazardous materials or, in the case of buses, passengers. This section requires establishment of a system to make readily available to the public,

and to update periodically, the safety ratings of motor carriers which have been assigned safety ratings determined by the Secretary to be unsatisfactory; and to provide that, in any case in which a motor carrier has been assigned a safety rating determined by the Secretary to be unsatisfactory and has submitted a written request to the Secretary for a reassessment of the rating, the Secretary, to the extent practicable, shall conduct the reassessment within nine months after receipt of the request.

Section 16(b) provides that the Secretary, not later than one year after the date of enactment of this bill, shall issue a final rule providing that any motor carrier that receives a safety rating determined by the Secretary to be unsatisfactory shall be prohibited from operating a commercial motor vehicle which meets the description set forth in section 204(1) (B) or (C) of the Motor Carrier Safety Act of 1984 (49 App. U.S.C. 2503(1) (B) or (C)) until such motor carrier has received a safety rating determined by the Secretary to be conditional or satisfactory.

Section 16(c) defines terms in this section of the legislation:

1. The term "commercial motor vehicle" has the meaning given such term in section 204(1) of the Motor Carrier Safety Act of 1984 (49 App. U.S.C. 2503(1)); and

2. The terms "conditional" and "unsatisfactory" have the meanings given those terms in part 385 of title 49, CFR, as in effect on the date of enactment of this bill.

SECTION 17.—RULEMAKING ON REGISTRATION

Concerns were raised in the Committee's hearings by the General Accounting Office and others that DOT lacks adequate information regarding those shippers, carriers, and container manufacturers involved in transporting hazardous materials and, therefore, subject to the jurisdiction of DOT and HMTA. DOT was given explicit authority when the HMTA was adopted in 1975 to establish broad registration requirements, but has chosen not to exercise that authority. The Committee believes that sufficient concerns have been raised about the possible need for registration requirements to warrant a rulemaking on this subject.

Section 17 of the reported bill provides that, not later than 18 months after the date of enactment of the legislation, the Secretary shall initiate a rulemaking proceeding concerning the need to establish annual or other registration requirements for persons or any class or category of persons who transport, ship, or cause to be transported or shipped in commerce hazardous materials, who store in transit hazardous materials, or who manufacture, fabricate, mark, maintain, recondition, repair, or test packages or containers which are represented, marked, certified, or sold for use in the transportation in commerce of hazardous materials. Such rulemaking shall take into consideration the feasibility of registration as a means of promoting compliance with HMTA or any order or regulation issued under that Act, targeting enforcement efforts, and identifying areas of high risk, including consideration of alternatives to registration, the costs of administering a registration program, and mechanisms for the recovery of such costs. Any final

rule issued under this subsection shall be issued not later than 30 months following the date of enactment of this bill.

SECTION 18.—RAIL PARTICIPATION PROGRAM

Section 18 of the bill would expand the State participation program under section 206 of FRSA to encompass hazardous materials regulations promulgated by DOT pursuant to HMTA. Currently, this section 206 participation program covers all areas of railroad safety other than hazardous materials.

Hazardous materials laws currently are excluded from section 206 because, by its terms, the section applies to regulations "prescribed by the Secretary under this title" (this title being FRSA) and other railroad safety laws listed in subsection (g) of section 206 of FRSA. To ensure that it is clear that the State participation program encompasses all areas of railroad safety, this section makes an amendment to section 206 of FRSA which departs from the previous scheme of specifically listing the applicable safety statutes and instead applies section 206 of FRSA to all regulations "related to railroad safety." Conforming amendments are made to the relevant subsections of section 206 and to sections 207 and 210 of FRSA.

This section requires that the Secretary retain exclusive authority to assess penalties and to request injunctive relief for the violation of rules, regulations, order, and standards. This authority also provides that the State may apply to the U.S. district court for assessment and collection of a civil penalty for such violation within 60 days after notification was received by the Secretary from a participating State agency from such State, if the appropriate Federal officials fail to act on such violation.

Expansion of the State participation program to include hazardous materials is intended to close a loophole in current law which limits the participation program to general rail safety violations but does not include hazmat violations. This expansion is not intended, however, to affect pending litigation on the issue of whether States have enforcement authority against railroads insofar as State hazmat laws and regulations are concerned.

SECTION 19.—SHIPPER RESPONSIBILITY STUDY

During the July 30, 1990, Committee hearing, the question of whether shippers should be given an incentive to select carriers on the basis of safety was raised. In particular, attention was given to the concept of providing that any shipper selecting a carrier with an unsatisfactory motor carrier safety rating, or which had a conditional motor carrier safety rating for more than 12 months, would be held liable for at least 50 percent of the costs associated with any hazardous material incident involving that carrier. In view of claims that the necessary DOT safety information on carriers is not readily available to shippers, the reported bill requires the Secretary to report to Congress, within three months of the date of enactment of the bill, on the safety benefits of implementing such a system of shared shipper-carrier liability, and such other systems as DOT may determine would assure greater shipper responsibility in selecting carriers for transporting hazardous materials.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new material is printed in italic, existing law in which no change is proposed is shown in roman):

HAZARDOUS MATERIALS TRANSPORTATION ACT

Section 103 of that Act

DEFINITIONS

SEC. 103. As used in this title, the term—

(1) "commerce" means trade, traffic, commerce, or transportation, within the jurisdiction of the United States, (A) between a place in a State and any place outside of such State, or (B) which affects trade, traffic, commerce, or transportation described in clause (A);

(2) "hazardous material" means a substance or material in a quantity and form which may pose an unreasonable risk to health and safety or property when transported in commerce;

(3) "imminent hazard" means the existence of a condition which presents a substantial likelihood that death, serious illness, severe personal injury, or substantial adverse effect to health, property or the environment may occur before the reasonably foreseeable completion date of an administrative hearing or other formal proceeding initiated to abate the risk of such harm;

(4) "Indian tribe" shall have the meaning given that term under section 4 of the Indian Self-Determination and Education Act (25 U.S.C. 450b);

(5) "motor carrier" means a motor common carrier, a motor contract carrier, or a motor private carrier as those terms are defined in section 10102 of title 49, United States Code;

(6) "person" means an individual, firm, co-partnership, corporation, company, association, joint-stock association, including any trustee, receiver, assignee, or similar representative thereof, government, Indian tribe, or agency or instrumentality of any government when it offers hazardous materials for transportation in commerce or transports hazardous materials in furtherance of a commercial enterprise, but does not include the United States Postal Service, and, for the purposes of sections 110 and 111 of this title, any agency or instrumentality of the Federal Government;

[3] *(7)* "Secretary means the Secretary of Transportation, or his delegate;

[(4) "serious harm" means death, serious illiness, or severe personal injury;]

[(5)] *(8)* "State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, or Guam;

[(6)] *(9)* "transports" or "transportation" means any movement of property by any mode, and any loading, unloading, or storage incidental thereto; and

[(7)] *(10)* "United States" means all of the States.

Section 105 of that Act

[REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS

[SEC. 105. (a) GENERAL.—The Secretary may issue, in accordance with the provisions of section 553 of title 5, United States Code, including an opportunity for informal oral presentation, regulations for the safe transportation in commerce of hazardous materials. Such regulations shall be applicable to any person who transports, or causes to be transported or shipped, a hazardous material, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of certain hazardous materials. Such regulations may govern any safety aspect of the transportation of hazardous materials which the Secretary deems necessary or appropriate, including, but not limited to, the packing, repacking, handling, labeling, marking, placarding, and routine (other than with respect to pipelines) of hazardous materials, and the manufacture, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold by such person for use in the transportation of certain hazardous materials.

[(b) COOPERATION.—In addition to other applicable requirements, the Secretary shall consult and cooperate with representatives of the Interstate Commerce Commission and shall consider any relevant suggestions made by such Commission, before issuing any regulation with respect to the routing of hazardous materials. Such Commission shall, to the extent of its lawful authority, take such action as is necessary or appropriate to implement any such regulation.

[(c) REPRESENATATION.—No person shall, by marking or otherwise, represent that a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this Act unless it meets the requirements of all applicable regulations issued under this Act.]

REGULATIONS GOVERNING TRANSPORTATION OF HAZARDOUS MATERIALS

SEC. 105. (a) GENERAL.—(1) The Secretary shall issue, in accordance with the provisions of section 553 of title 5, United States Code, including an opportunity for informal oral presentation, regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce.

(2) The regulations issued under this subsection shall be applicable to any person who transports, or causes to be transported or shipped, a hazardous material, or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person as qualified for use in the transportation in commerce of certain hazadous materials.

(3) Regulations issued under this subsection shall govern any aspect of hazardous materials transportation safety which the Secretary determines necessary or appropriate.

(b) HIGHWAY ROUTING OF HAZARDOUS MATERIALS.—(1) Not later than 1 year after the date of enactment of the Hazardous Materials Transportation Safety Improvement Act of 1990, the Secretary shall issue standards for the designation of highway routes over which hazardous materials may be transported in commerce by motor carriers. Following issuance of such standards, no State, political subdivision of a State, Indian tribe, or Federal agency shall designate highway routes for the transportation of hazardous materials, except in accordance with those standards.

(2) Highway routing standards issued by the Secretary under paragraph (1) shall include the following requirements:

(A) Highway route designations shall enhance overall public safety in the jurisdiciton of the authroity designating the route and in other jurisdctions directly affected by the designation.

(B) Each State, political subdivision of a State, Indian tribe, or Federal agency seeking to designate a highway route for the transportation of hazardous materials shall consult with each jurisdiction directly affected by the designation and offer an opportunity for public comment.

(C) No such route designation by a State, political subdivision of a State, Indian tribe, or Federal agency may be executed unless (i) it is agreed to by each State, Indian tribe, or Federal agency directly affected by the designation, or (ii) any dispute over the route designation arising from the failure of such an affected State, Indian tribe, or Federal agency to agree to that designation is resolved in favor of the designating State, Indian tribe, or Federal agency under paragraph (5) of this subsection.

(D) Such route designations shall not unreasonably burden commerce.

(E) The route designation process provided in this subsection, including the participation of affected jurisdictions, shall be completed in a timely manner.

(3) Standards issued by the Secretary under paragraph (1) shall provide for consideration of factors such as—

(A) population density;
(B) type of highways;
(C) type and quantities of hazardous materials;
(D) emergency response capabilities;
(E) consultation with affected parties;
(F) exposure and other risk factors;
(G) terrain considerations;
(H) continuity of routes;
(I) alternative routes;
(J) effects on commerce; and
(K) such other factors as the Secretary considers appropriate.

(4) States shall be responsible for determining, in accordance with requirements established by the Secretary, that the highway route designations of their political subdivisions are in accordance with this subsection.

(5)(A) If a State (on its behalf or on behalf of one of its political subdivisions), Indian tribe, or Federal agency is unable to obtain the

agreement of any adjacent State, Indian tribe, or Federal agency to a highway route designation in accordance with this subsection, after attempting to resolve the dispute directly with such adjacent State, Indian tribe, or Federal agency, the State, Indian tribe, or Federal agency seeking designation may petition the Secretary to resolve the dispute. This paragraph does not apply to disputes between political subdivisions within a State.

(B) The Secretary shall, within 18 months after the date of enactment of the Hazardous Materials Transportation Safety Improvement Act of 1990, issue regulations for resolving disputes between or among States, Indian tribes, and Federal agencies under this paragraph.

(C) The Secretary shall resolve a dispute under this paragraph within 1 year after the date the Secretary receives the petition for resolution of such dispute.

(D) Where any State, Indian tribe, or Federal agency is seeking a highway route designation, the regulations issued under subparagraph (B) shall provide for a finding in favor of such State, Indian tribe, or Federal agency if that designation is in accordance with the standards issued under paragraph (1) of this subsection and the highway route in dispute will provide the greatest level of highway safety without unreasonably burdening commerce.

(c) JUDICIAL REVIEW.—(1) Except as provided in paragraph (2), route designations and dispute resolution decisions rendered under subsection (b) shall not be subject to judicial review in any civil or criminal proceeding to enforce a route designation.

(2) Any State or Indian tribe that is a party to a proceeding under subsection (b)(5) and that is adversely affected by a decision rendered in such proceeding may, at any time before the expiration of 60 days after that decision becomes final, file a petition for judicial review with the appropriate district court of the United States.

(d) LIST OF ROUTE DESIGNATION.—The Secretary shall periodically update and publish a list of currently effective hazardous materials highway route designations.

(e) INTERNATIONAL UNIFORMITY.—(1) Subject to guidance and direction from the Secretary of State, the Secretary shall participate in international forums that establish or recommend mandatory standards and requirements for the transportation of hazardous materials in international commerce.

(2) The Secretary may consult with interested agencies to assure that, to the extent practicable, regulations issued by the Secretary pursuant to this section shall be consistent with standards adopted by international bodies applicable to the transportation of hazardous materials. Nothing in this subsection shall require the Secretary to issue a standard identical to a standard adopted by an international body, if the Secretary determines the standard to be unnecessary or unsafe, nor shall the Secretary be prohibited from establishing safety requirements that are more stringent than those included in a standard adopted by an international body, if the Secretary determines that such requirements are necessary in the public interest.

(f) DISCLOSURE.—(1) Each person who offers for transportation in commerce a hazardous material that is subject to the shipping paper requirements of the Secretary shall provide the carrier, or maintain on the vehicle if a private motor carrier, a shipping paper

that, at a minimum, discloses in a manner prescribed by the Secretary, the following:

(A) a description of the hazardous material including the proper shipping name;

(B) the hazard class of the hazardous material;

(C) the identification number (UN/NA) of the material;

(D) immediate first action emergency response information or a means for appropriate reference to such information which must be immediately available; and

(E) a telephone number for the purpose of obtaining more specific handling and mitigation information concerning the hazardous material at any time during its transportation.

(2) Any person who transports a hazardous material in commerce shall, in the event of an incident involving such material, immediately disclose to appropriate emergency response authorities, upon their request, information on the hazardous material being transported.

(g) UNLAWFUL REPRESENTATION.—No person shall, by marking or otherwise, represent that—

(1) a container or package for the transportation of hazardous materials is safe, certified, or in compliance with the requirements of this title unless it meets the requirements of all applicable regulations issued under this title; or

(2) a hazardous material is present in a package, container, motor vehicle, rail freight car, aircraft, or vessel, if that hazardous material is not present.

(h) UNLAWFUL TAMPERING.—No person shall unlawfully alter, remove, deface, destroy, or otherwise tamper with—

(1) any marking, label, placard, or description on a document required by this title or a regulation issued under this title; or

(2) any package, container, motor vehicle, rail freight car, aircraft, or vessel used for the transportation of hazardous materials.

(i) RETENTION OF MARKINGS AND PLACARDS.—Not later than 6 months after the date of enactment of this subsection, the Secretary of Labor, in consultation with the Secretary of Transportation and the Secretary of the Treasury, shall issue under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655(b)) standards requiring any employer who receives a package, container, motor vehicle, rail freight car, aircraft, or vessel which contains a hazardous material and which is required to be marked, placarded, or labeled in accordance with regulations issued under this Act to retain the markings, placards, and labels, and any other information as may be required by such regulations on the package, container, motor vehicle, rail freight car, aircraft, or vessel, until the hazardous materials have been removed therefrom.

Section 106 of that Act

HANDLING OF HAZARDOUS MATERIALS

SEC. 106. (a) * * *

(b) through (c) * * *

(d) PERMITTING.—(1) Effective one year after the date of enactment of this subsection, no motor carrier may transport or cause to

be transported in commerce, in a quantity established by the Secretary, any class A or B explosives, any hazardous material which has been designated by the Secretary as extremely toxic by inhalation, or any highway route controlled quantity of radioactive materials as defined by the Secretary, unless the carrier obtains and possesses a valid safety permit issued by the Secretary authorizing the carrier to engage in such transportation. Each person who offers for transportation in commerce a hazardous material to which this subsection applies may only offer such material to a carrier presenting a valid safety permit.

(2) The Secretary shall issue a safety permit to each carrier required under paragraph (1) to possess a permit if the carrier submits a complete application and meets all other requirements of the regulations issued by the Secretary under paragraph (4), including a certification that the carrier has identified all hazardous materials regulations of the Secretary applicable to the carrier's operations and is in full compliance therewith and with the Federal Motor Carrier Safety regulations contained in subchapter B of chapter III of title 49, Code of Federal Regulations.

(3) Any safety permit ussued under this subsection may, after notice and an opportunity for a hearing, be amended, suspended, or revoked by the Secretary in accordance with procedures established under paragraph (4) whenever the Secretary determines that a carrier has failed to comply with a requirement of this title or any regulation issued under this title. In cases of imminent hazard, the Secretary may amend or suspend a safety permit immediately without the opportunity for a hearing.

(4) The Secretary shall, by regulation, establish—

(A) to which hazardous materials and in what quantities this subsection applies;

(B) standards of compliance required to be met for issuance of a safety permit;

(C) application procedures, including form, content, and filing fees;

(D) standards for determining the duration, terms, conditions, or limitations of a safety permit;

(E) procedures for the amendment, suspension, or revocation of a safety permit; and

(F) any othe procedures the Secretary considers appropriate to implement this subsection.

(5) Not later than 12 months after the date of enactment of this subsection, the Secretary shall initiate a rulemaking proceeding to determine which additional materials, if any, should be included among the materials specified in paragraph (1), for which motor carrier safety permits are required because of their high degree of risk when transported. Such proceeding shall take into consideration factors including toxicity, inhalation hazard, and evacuation distances required, as well as the potential for multiple deaths or injuries or significant environmental hazards, in the event of an accident. Such proceeding shall be completed within 24 months after such date of enactment. The Secretary shall, within 3 months after completion of such proceeding, issue a rule specifying the materials, if any, which shall be included among those materials whose carriage requires a safety permit in order to protect the public interest.

(6) The Secretary shall conduct a rulemaking proceeding and, within 12 months after the date of enactment of this subsection, shall issue regulations requiring safe operations by persons who transport or cause to be transported by rail, air, or water in commerce any class A or B explosives, any hazardous material which has been designated by the Secretary as extremely toxic by inhalation, any radioactive material in such quantity as established by the Secretary, or any other hazardous material the Secretary determines should be subject to such regulations because of its high degree of risk when transported. Such proceeding shall take into consideration factors including toxicity, inhalation hazard, and evacuation distances required, as well as the potential for multiple deaths or injuries or significant environmental hazards, in the event of an accident.

Section 107 of that Act

EXEMPTIONS

SEC. 107. (a) GENERAL.—The Secretary, in accordance with procedures prescribed by regulation, is authorized to issue or renew, to any person subject to the requirements of this title, an exemption from the provisions of this title, and from regulations issued under section 105 of this title, if such person transports or causes to be transported or shipped hazardous materials in a manner so as to achieve a level of safety (1) which is equal to or exceeds that level of safety which would be required in the absence of such exemption, or (2) which would be consistent with the public interest and the policy of this title in the event there is no existing level of safety established. The maximum period of an exemption issued or renewed under this section shall not exceed 2 years, but any such exemption may be renewed upon application to the Secretary. Each person applying for such an exemption or renewal shall, upon application, provide a safety analysis as prescribed by the Secretary to justify the grant of such exemption. A notice of an application for issuance or renewal of such exemption shall be published in the Federal Register *except that such publication shall not be required in the case of a renewal involving only an extension of the time during which the exemption is in effect.* The Secretary shall afford access to any such safety analysis and an opportunity for public comment on any such application, except that nothing in this sentence shall be deemed to require the release of any information described by subsection (b) of section 552 of title 5, United States Code, or which is otherwise protected by law from disclosure to the public.

(b) through (d) * * *

Section 108 of that Act

TRANSPORTATION OF RADIOACTIVE MATERIALS ON PASSENGER-CARRYING AIRCRAFT

SEC. 108. (a) * * *

(b) DEFINITION.—As used in this section, "radioactive materials" means any materials or combination of materials which spontaneously emit ionizing radiation. [The term does not include materi-

als in which (1) the estimated specific activity is not greater than 0.002 microcuries per gram of material; and (2) the radiation is distributed in an essentially uniform manner.] *The term does not include any material which the Secretary determines is of such low order of radioactivity that when transported does not pose a significant hazard to health or safety.*

Section 109 of that Act

POWERS AND DUTIES OF THE SECRETARY

SEC. 109. (a) * * *
(b) through (c) * * *
(d) FACILITIES AND DUTIES.—(1) The Secretary shall—
(A) through (B) * * *
(C) conduct a continuing review of all aspects of the transportation of hazardous materials in order to determine and to be able to [recommend] *take* appropriate steps to assure the safe transportation of hazardous materials.
(e) * * *

Section 110 of that Act

PENALTIES

SEC. 110. (a) CIVIL.—(1) Any person [(except an employee who acts without knowledge)] who is determined by the Secretary, after notice and an opportunity for a hearing, to have [knowingly] committed an act which is a violation of a provision of this [title or of a] *title, or an order or* regulation issued under this title, shall be liable to the United States for a civil penalty. Whoever [knowingly] commits an act which is a violation of any *order or* regulation, applicable to any person who transports or causes to be transported or shipped hazardous materials, shall be subject to a civil penalty of not more than [$10,000] *$25,000 and not less than $250* for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. Whoever [knowingly] commits an act which is a violation of any *order or* regulation applicable to any person who manufacturers, fabricates, marks, maintains, reconditions, repairs, or tests a package or container which is represented, marked, certified, or sold by such person for use in the transportation in commerce of hazardous materials shall be subject to a civil penalty of not more than [$10,000] *$25,000 and not less than $250* for each violation. The amount of any such penalty shall be assessed by the Secretary by written notice. In determining the amount of such penalty, the Secretary shall take into account the nature, circumstances, extent, and gravity of the violation committed and, with respect to the person found to have committed such violation, the degree of culpability, any history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice may require.

[(b) CRIMINAL.—A person is guilty of an offense if he willfully violates a provision of this title or a regulation issued under this title. Upon conviction, such person shall be subject, for each of-

fense, to a fine of not more than $25,000, imprisonment for a term not to exceed 5 years, or both.]

(b) CRIMINAL.—A person who knowingly violates section 105(f) of this title or willfully violates a provision of this title or an order or regulation issued under this title shall be fined under title 18, United States Code, or imprisoned for not more than 5 years, or both.

Section 111 of that Act

SPECIFIC RELIEF

SEC. 111. (a) * * *

(b) IMMINENT HAZARD.—If the Secretary has reason to believe that an imminent hazard exists, he may petition an appropriate district court of the United States, or upon his request the Attorney General shall so petition, for an order suspending or restricting the transportation of the hazardous material responsible for such imminent hazard, or for such other order as necessary to eliminate or ameliorate such imminent hazard. [As used in this subsection, an "imminent hazard" exists if there is substantial likelihood that serious harm will occur prior to the completion of an administrative hearing or other formal proceeding initiated to abate the risk of such harm]

Section 114 of that Act

EFFECTIVE DATE

SEC. 114. * * *

TRANSPORTATION OF CERTAIN HIGHLY RADIOACTIVE MATERIALS

SEC. 115. (a) DEDICATED TRAINS.—Within 120 days after the date of enactment of this section, the Secretary shall issue regulations, in accordance with this section and pursuant to section 105 of this title, with respect to the transportation by rail of high-level radioactive waste and spent nuclear fuel. Such regulations shall prohibit any transportation of such materials by rail, including shipments of such materials made by or under the direction or supervision of the Department of Energy or the Department of Defense, unless such materials are transported on trains operated exclusively for such purpose. The Secretary shall establish effective procedures for monitoring and enforcing the provisions of such regulations.

(b) MODE AND ROUTE SELECTION.—The Secretary shall, within 12 months after the date of enactment of this section, issue standards for the selection of shipping modes and routes used for the transportation of high-level radioactive waste and spent nuclear fuel. Such standards shall be developed in consultation with all potentially-affected States and Indian tribes and after notice and opportunity for public comment, and shall include but not be limited to requirements that enhance overall public safety, taking into consideration population densities, types and conditions of modal infrastructures (including highways, railbeds, and waterways), quantities of high-level radioactive waste and spent nuclear fuel, emergency response capabilities, exposure and other risk factors, terrain considerations,

continuity of routes, available alternative routes, environmental impact factors, and such other factors as may be necessary to facilitate selection of shipping modes and routes by the Secretary.

(c) REQUIRED CERTIFICATION OF PACKAGES.—(1) The Secretary shall not permit transportation of high-level radioactive waste or nuclear spent fuel except in packages or containers that have been certified for such transportation by the Commission.

(2) As part of the process of certifying any package or container referred to in paragraph (1), the Commission shall require the performance of actual testing on a sample full-scale package or container, in addition to any simulated testing, testing on scale models, or engineering analysis.

(d) DEFINITIONS.—As used in this section, the term—

(1) "Commission" means the Nuclear Regulatory Commission;

(2) "high-level radioactive waste" has the meaning given such term in section 2(12) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(12)); and

(3) "spent nuclear fuel" has the meaning given such term in section 2(23) of the Nuclear Waste Policy Act of 1982 (42 U.S.C. 10101(23)).

Section 116 of that Act

[EVALUATION OF TRAINING PROGRAMS FOR INCIDENT PREVENTION AND RESPONSE

[SEC. 116. EVALUATION.—The Secretary and the Director of the Federal Emergency Management Agency (hereinafter in this section referred to as the "Director"), in coordination with other Federal, State, and local agencies with responsibilities relating to transportation of hazardous materials (including but not limited to the Environmental Protection Agency, the Department of Energy, and the Nuclear Regulatory Commission), shall each evaluate—

[(1) programs conducted by Federal, State, and local agencies and private organizations which provide training to shippers, carriers, inspectors, and enforcement personnel involved in the transportation of hazardous materials with respect to compliance with and enforcement of rules, regulations, standards, and orders promulgated by the Secretary under the authority of this title;

[(2) programs conducted by Federal, State, and local agencies and private organizations which provide training to agencies or organizations responsible for responding to incidents involving transportation of hazardous materials; and

[(3) planning programs conducted by Federal, State, and local agencies and private organizations for responding to incidents involving transportation of hazardous materials.

[(b) REPORT.—Not later than five months after the date of the enactment of this section [enacted Oct. 30, 1984], the Secretary and the Director shall each submit an interim report to the Congress on the results of their respective evaluations under subsection (a). Not later than 10 months after the date of the enactment of this section, the Secretary and the Director shall complete such evaluations and submit the results of such evaluations to the Congress. Such reports shall include, but not be limited to—

[(1) a description of existing planning programs for responding to incidents involving transportation of hazardous materials;

[(2) a description of Federal, State, and (to the extent feasible) local training programs for responding to incidents involving transportation of hazardous materials and for compliance with and enforcement of rules, regulations, standards, and orders promulgated by the Secretary under the authority of this title;

[(3) the amounts of funds expended per fiscal year in fiscal years 1980, 1981, 1982, 1983, and 1984 by Federal and State agencies on training programs described in paragraph (2); and

[(4) recommendations concerning methods of funding such training programs, including but not limited to methods to which assure long-term funding for such programs.]

EMERGENCY RESPONSE PLANNING AND TRAINING GRANTS

SEC. 116. (a) AUTHORITY TO MAKE GRANTS.—(1) The Secretary shall make grants beginning not later than 1 year after the date of enactment of this section to States and Indian tribes to enhance planning for responding to emergencies involving transportation of hazardous materials and for training public sector personnel used for such response.

(2) The Secretary may not make a grant to a State or Indian tribe under this section unless such State or Indian tribe agrees that the aggregate expenditure of funds of the State or Indian tribe, exclusive of Federal funds, for training public sector personnel to respond to accidents and incidents involving the transportation of hazardous materials will be maintained at a level which does not fall below the average level of such expenditure for its last 2 fiscal years preceding the date of the enactment of this section.

(3) At least 75 percent of amounts appropriated for making grants to States under this section shall be allocated by States to political subdivisions of the State.

(b) GRANT USE PLAN.—(1) In addition to any other requirements established by the Secretary for applications for grants under this section, an applicant for a grant under this section shall submit to the Secretary a detailed plan for the effective and coordinated use of such grant that describes—

(A) activities to be carried out with the grant; and

(B) the justification for and objectives of those activities.

(2) A grant use plan submitted under this subsection shall—

(A) include a description of the training and planning objectives to be accomplished with such grant;

(B) foster and promote to the maximum extent possible regional cooperation, regional emergency response teams, and regional approaches to handling hazardous materials, including the linking of response capabilities and emergency response planning between communities and their neighbors; and

(C) eliminate duplication of existing efforts and provide for coordination of activities carried out with the grant with other emergency response activities conducted by Federal, State,

tribal, regional, and local governmental and non-governmental entities.

(c) ADMINISTRATION OF PROJECTS.—Not later than 1 year after the date of enactment of this section, the Secretary shall issue regulations establishing requirements for the administration of projects to be carried out with grants under this section. Such regulations shall require that such projects shall be administered, in whole or in part—

(1) by State or tribal emergency response commissions established pursuant to section 301 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11001);

(2) by local emergency planning committees established pursuant to that section; or

(3) by a State or tribal agency or regional coordinating entity to be designated by the Governor of a State or Chief Executive Officer of an Indian tribe.

(d) USE OF GRANTS.—Amounts received in the form of a grant under this section shall be used for—

(1) surveying the routes over which hazardous materials are transported and the characteristics of that transportation;

(2) analyzing hazards associated with that transportation;

(3) defining specific response functions and roles of agencies and personnel of the grantee for those emergencies;

(4) developing a long-term strategy to assure that governmental resources, and training for those resources, will be available to implement emergency response functions defined pursuant to paragraph (3);

(5) improving and exercising hazardous materials transportation emergency response plans;

(6) developing procedures for notifying, evacuating, and sheltering the public in the event of a hazardous materials transportation emergency;

(7) paying for training and costs associated with training courses and materials; or

(8) increasing the capability of the grantee to train personnel and plan for and respond to emergencies involving transportation of hazardous materials.

(e) REQUIREMENTS TO PROMOTE EFFECTIVE USE OF TRAINING AND PLANNING FUNDS.—(1) As a condition of receiving a grant under this section for carrying out training of personnel, a State, political subdivision of a State, or Indian tribe shall certify in writing to the Secretary that the grant will be used to train a wide variety of emergency response personnel, including police, emergency medical technicians, and fire and rescue service personnel.

(2) Training of personnel conducted with grant monies authorized under this section shall be carried out in accordance with—

(A) training requirements of section 305(a) of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 11005(a)); and

(B) occupational safety and health standards issued by the Administrator of the Environmental Protection Agency or issued by the Secretary of Labor, including but not limited to the standards set forth in part 1910 of title 29, Code of Federal

Regulations, and consensus standards of the National Fire Protection Association; or

(C) other training standards or courses issued, approved, or recommended by the Secretary, the Administrator of the Environmental Protection Agency, the Director of the Federal Emergency Management Agency, the Nuclear Regulatory Commission, the Secretary of Labor, the Secretary of Energy, the Secretary of Health and Human Services, the Federal Radiological Preparedness Coordinating Committee (for radioactive materials), or the National Response Team established under Section 300.32 of title 40, Code of Federal Regulations.

(3) The Secretary shall allocate funds made available for grants under this section for a fiscal year among States and Indian tribes which are eligible to receive such grants in such fiscal year based upon the needs of such States and Indian tribes for emergency response planning and training. In determining such needs, the Secretary shall consider the number and type of facilities affecting hazardous materials transportation in the State or on the lands of the Indian tribe, the types and amounts of hazardous materials transported in the State or on the lands of the Indian tribe, and also whether or not the State or Indian tribe assesses and collects fees on the transportation of hazardous materials, whether or not such fees are used solely to carry out purposes related to the transportation of hazardous materials, whether or not regional or cooperative response efforts have been coordinated, and such other factors as the Secretary determines are appropriate to carry out the objectives of this subsection.

(f) ADOPTION OF FEDERAL STANDARDS AND COMPLIANCE WITH EMERGENCY PLANNING REQUIREMENTS BY STATES OR INDIAN TRIBES.—The Secretary may only make a grant to a State or Indian tribe under this section in a fiscal year if the State or Indian tribe is complying with sections 301 and 303 of the Emergency Planning and Community Right-To-Know Act of 1986 (42 U.S.C. 1101 and 1103), including compliance with and enforcement of such sections with respect to accidents and incidents involving the transportation of hazardous materials.

(g) FEDERAL SHARE.—By a grant under this section, the Secretary shall reimburse any State or Indian tribe an amount not to exceed 80 percent of the cost incurred by such State or Indian tribe in the fiscal year for carrying out the activities for which the grant is made. The funds of the State or Indian tribes which are required to be expended under subsection (a)(2) shall not be considered to be part of the non-Federal share.

ASSISTANCE TO STATE, TRIBAL, AND LOCAL GOVERNMENTS

SEC. 117. As appropriate, in cooperation with the Director of the Federal Emergency Management Agency and the Administrator of the Environmental Protection Agency, the Secretary shall—

(1) provide technical assistance to State, tribal, regional, and local governments to encourage effective and efficient emergency responses to accidents involving the transportation of hazardous materials, including assistance in the development and use of regional response teams;

(2) develop, collect, and disseminate information concerning methods of responding to such accidents and training programs for responding to such accidents;

(3) provide technical and financial assistance for regional planning in, and studies of, methods of improving coordinated and effective responses to such accidents;

(4) provide technical guidance and support to assist State, tribal, regional, and local governments in enforcing regulations issued pursuant to this title;

(5) provide other technical and policy assistance to State, tribal, regional, or local government entities before or during the formulation of regulations affecting hazardous materials transportation safety and before or during the formulation of routing schemes; and

(6) provide other forms of technical, policy, and financial assistance to State, tribal, regional, and local government entities that would promote hazardous materials transportation safety.

Section 115 of that Act (redesignated as section 118)

[AUTHORIZATION FOR APPROPRIATIONS

[SEC. 115. There is authorized to be appropriated to carry out the provisions of this title not to exceed $7,500,000 for the fiscal year ending September 30, 1985, and $8,000,000 for the fiscal year ending September 30, 1986.]

AUTHORIZATION OF APPROPRIATIONS

SEC. 118. (a) IN GENERAL.—There is authorized to be appropriated for carrying out the provisions of this title other than section 116 not to exceed $10,600,000 for the fiscal year ending September 30, 1990, $12,000,000 for the fiscal year ending September 30, 1991, and $14,000,000 for the fiscal year ending September 30, 1992.

(b) EMERGENCY RESPONSE PLANNING AND TRAINING GRANTS.—There is authorized to be appropriated for carrying out the provisions of section 116 not to exceed $10,000,000 for the fiscal year ending September 30, 1991, and $25,000,000 for the fiscal year ending September 30, 1992.

FEDERAL RAILROAD SAFETY ACT OF 1970

Section 206 of the Act

STATE PARTICIPATION

SEC. 206. (a) A State may participate in carrying out investigative and surveillance activities in connection with any rule, regulation, order, or standard prescribed *related to railroad safety* by the Secretary [under this title] if the safety practices applicable to railroad facilities, equipment, rolling stock, and operations within such State are regulated by a State agency and such State agency submits to the Secretary an annual certification that such State agency—

(1) has regulatory jurisdiction over the safety practices applicable to railroad facilities, equipment, rolling stock, and operations within the State concerned;

(2) has been furnished a copy of each Federal safety rule, regulation, order, and standard, applicable to any such railroad facility, equipment rolling stock, or operation, [established under this title] as of the date of the certification;

(3) is conducting the investigative and surveillance activities prescribed by the Secretary as necessary for the enforcement by him of each rule, regulation, order, and standard referred to in paragraph (2) of this subsection, as interpreted by the Secretary.

The Secretary shall retain the exclusive authority to assess and compromise penalties and (except as otherwise provided by section 207 of this title) to request injuctive relief for the violation of rules, regulations, orders, and standards [prescribed by the Secretary under section 202(a) of this title] *relating to railroad safety prescribed by the Secretary* and to recommend appropriate action as provided by sections 209 and 210 of this title.

(b) Each annual certification shall include a report, in such form as the Secretary may by regulation provide, showing—

(1) through (2) * * *

(3) the record maintenance, reporting, and inspection practices conducted by the State agency to aid the Secretary in his enforcement of rules, regulations, orders, and standards [prescribed by him under section 202(a) of this title] *relating to railroad safety prescribed by the Secretary*, including a detail of the number of inspections made of rail facilities, equipment, rolling stock, and operations by the State agency during the preceding twelve months; and

(4) * * *

* * * * * * *

(c) through (e) * * *

(f) The certification which is in effect under subsection (a) of this section shall not apply with respect to any new or amended Federal safety rule, regulation, order, or standard for railroads established [under this title] after the date of such certification until the State agency has submitted an appropriate certification in accordance with the provisions of subsection (a) of this section to provide the necessary inspection and surveillance activities in accordance with the provisions of such subsection.

(g) * * *

Section 207 of that Act

ENFORCING COMPLIANCE WITH FEDERAL RAILROAD SAFETY RULES, REGULATIONS, ORDERS, AND STANDARDS

SEC. 207. (a)(1) In any case in which the Secretary has failed to assess the civil penalty applicable [under section 209 of this title] with respect to a violation of any railroad safety rule, regulation, order, or standard [issued under this title or under any law transferred by section 6(e)(1), (e)(2), or (e)(6)(A) of the Department of Transportation Act] within sixty days after the date on which notification was received by the Secretary from a State agency participating in investigative and surveillance activities under the provisions of section 206 of this title, that State agency may apply to

the United States district court for the judicial district in which the violation occurred or in which the defendant has its principal executive office for the assessment and collection of the civil penalty included in or made applicable to such rule, regulation, order, or standard.

(2) * * *

(b) through (c) * * *

Section 210 of that Act

INJUNCTIVE RELIEF

SEC. 210. (a) The United States district court shall, at the request of the Secretary and upon petition by the Attorney General on behalf of the United States, or upon application by a State agency pursuant to section 207 of this title, have jurisdiction, subject to the provisions of rule 65 (a) and (b) of the Federal Rules of Civil Procedure, to restrain violations of [this title] or to enforce rules, regulations, orders, or standards established under this title] *or to enforce rules, regulations, orders, or standards relating to railroad safety* and to restrain violations of or to enforce rules, regulations, orders, or standards established under any statute transferred to the Secretary under section 6(e)(1), (e)(2), and (e)(6)(A) of the Department of Transportation Act (49 U.S.C. 1655(e)(1), (e)(2), and (e)(6)(A).

(b) through (c) * * *

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